The
CORPORATION JOURNAL

Trademark ®

In the incorporation, qualification and statutory representation of corporations, The Corporation Trust Company, C T Corporation System and associated companies deal with and act for lawyers exclusively.

Vol. 19, No. 16 APRIL 1951 Complete No. 371

•

Illinois retailers sales tax held by the Supreme Court of the United States to be applicable to all Illinois orders of Massachusetts corporation except those sent by Illinois customers direct to Massachusetts office and filled from there by shipment directly to Illinois customers

Published by The Corporation Trust Company and Associated Companies

WHICH SHOULDER ARE *You* LOOKING OVER?

Time was when the man handling a corporation's state tax and report matters could relax a mite as March waned —but not this year. With 44 state legislatures convening, he has to keep an eye cocked over his shoulder for possible retroactive legislation providing for new taxes or increasing existing tax rates. There undoubtedly will be some.

Searching for such legislation, getting all the facts and getting them right is time-consuming drudgery. But for corporations protected by the C T System of Corporate Protection it's no job at all. Through C T's Tax Notification Bulletins the facts are laid, just when they need attention, on the desk of the man counsel designates.

CT SYSTEM

The Corporation Trust Company
C T Corporation System
and Associated Companies

Albany 10 . . . 4 S. Hawk Street	Jersey City 2 . 15 Exchange Place
Atlanta 3 . . . Healey Building	Los Angeles 13 . 510 S. Spring Street
Baltimore 2 . . . 10 Light Street	Minneapolis 1 . Midland Bank Bldg.
Boston 9 . . 10 Post Office Square	New York 5 . . . 120 Broadway
Buffalo 3 . Ellicott Square Building	Philadelphia 9 . 123 So. Broad St.
Chicago 4 . 208 S. La Salle Street	Pittsburgh 22 . . Oliver Building
Cincinnati 2 . . . Carew Tower	Portland, Me. 3 . 57 Exchange Street
Cleveland 14 . Union Commerce Bldg.	San Francisco 4 . . Mills Building
Dallas 1 . Republic Bank Building	Seattle 4 . . 1004 Second Avenue
Detroit 26 . . . . Dime Building	St. Louis 2 . 314 North Broadway
Dover, Del. . . 30 Dover Green	Washington 4 . . Munsey Building
Houston 2 . . . Sterling Building	Wilmington . 100 West 10th Street

The
CORPORATION JOURNAL

Trademark ®

APRIL 1951

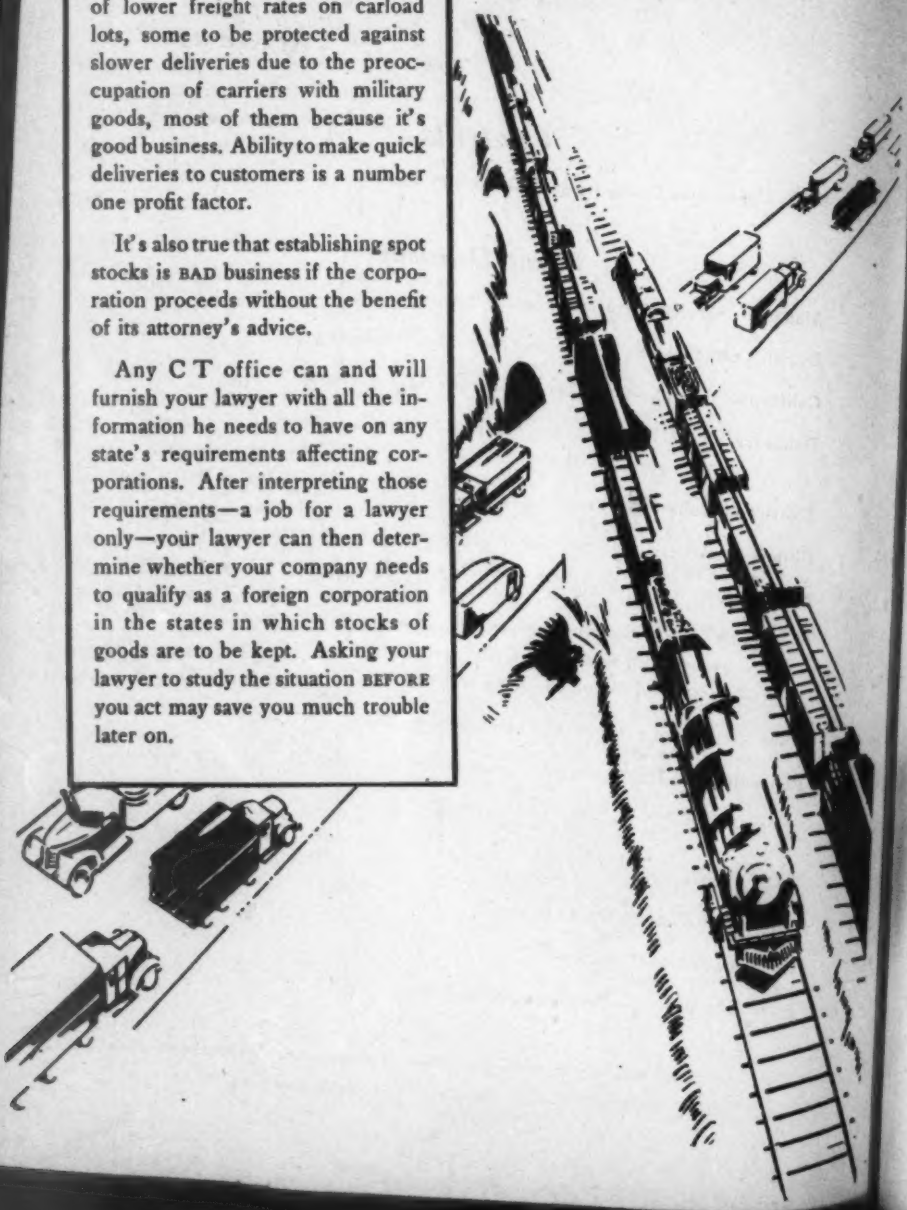
Contents

Recent Decisions

Yes, it's true that more and more corporations are rushing to establish spot stocks at key points throughout the country: some to take advantage of lower freight rates on carload lots, some to be protected against slower deliveries due to the preoccupation of carriers with military goods, most of them because it's good business. Ability to make quick deliveries to customers is a number one profit factor.

It's also true that establishing spot stocks is BAD business if the corporation proceeds without the benefit of its attorney's advice.

Any C T office can and will furnish your lawyer with all the information he needs to have on any state's requirements affecting corporations. After interpreting those requirements—a job for a lawyer only—your lawyer can then determine whether your company needs to qualify as a foreign corporation in the states in which stocks of goods are to be kept. Asking your lawyer to study the situation BEFORE you act may save you much trouble later on.



what constitutes doing business

Sales By Sample

IT HAS LONG been established that where an unlicensed foreign corporation sends a salesman, equipped with samples, into a state to secure orders by means of the exhibition of the samples, which are filled by the shipment to the purchaser of the goods from another state, this activity constitutes interstate commerce, and does not give rise to liability on the part of the selling corporation to qualification in the purchaser's state. (*Wyman, Partridge Holding Co. v. Lowe et al.*, (S. D.) 272 N. W. 181; *M. E. Smith & Co. v. Dickinson et al.*, 81 Wash. 465, 142 Pac. 1133; *Larkin Co. v. Commonwealth*, (Ky.) 172 Ky. 106, 189 S. W. 3.

There are decisions indicating that such activities did not subject such a seller to a state income tax, (*Curlee Clothing Co. v. Oklahoma Tax Com. et al.*, 68 P. 2d 834), a state excise tax, (*Cheney Brothers Company v. Com. of Massachusetts*, 246 U. S. 147), a state license or franchise tax, (*Dennison Mfg. Co. et al. v. Wright*, 156 Ga. 789, 120 S. E. 120), a state tax on merchants other than regular merchants, selling by sample, (*Best & Co., Inc. v. Maxwell Co.*, 61 S. Ct. 334, 311 U. S. 454), a state occupation license tax, (*Simmons Hardware Co. v. McGuire*, (La.) 2 So. 592; *McLellan v. Pettigrew*, (La.) 10 So. 853; *Robbins v. Shelby County Taxing District*, 120 U. S. 489), or to the payment of municipal license taxes aimed at such activities, (*Brennan v. Titusville*, 153 U. S. 289; *Rearick v. Pennsylvania*, 203 U. S. 507; *Best & Co., Inc. v. City of Omaha et al.*, 33 N. W. 2d 150, certiorari denied, 336 U. S. 935; *Stratford v. City Council of Montgomery*, 20 So. 127.)

In a 1946 decision, *Nippert v. City of Richmond*, 327 U. S. 416, the Supreme Court of the United States, in ruling invalid a city ordinance licensing solicitors, as applied to persons soliciting orders in interstate commerce, refused to overrule its long line of so-called "drummer cases," in which license taxes, sought to be applied to salesmen engaged in soliciting orders in interstate commerce, frequently by sample, had not been sustained. The court observed in that case: "As has been so often stated, but nevertheless seems to require constant repetition, not all burdens upon commerce, but only undue or discriminatory ones, are forbidden."

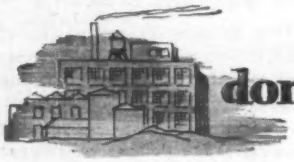
In *Cheney Brothers Company v. Massachusetts*, 246, U. S. 147, the Supreme Court of the United States said:

> "The maintenance of the Boston office and the display therein of a supply of samples are in furtherance of the company's interstate business and have no other purpose. Like the employment of the salesmen, they are among the means by which that business is carried on and share its immunity from state taxation."

In a South Dakota decision, the rule was extended to the sale of the samples themselves by the agents, where a portion of the questioned sales were of samples intended for use in the solicitation of orders in interstate commerce. (*Wyman, Partridge Holding Co. v. Lowe et al.*, 272 N. W. 181.) There the State Supreme Court said:

"The fact that some of these samples were sold direct to the respondents does not make said sale a sale in intrastate commerce and one which will label all transactions between appellant and respondents as intrastate. Such a sale of an implement of interstate commerce is merely incidental to the main business transactions between the appellant and respondents which are concededly interstate in character."

Where a show room has been maintained in a state by an unlicensed foreign corporation for the purpose of securing orders for the shipment into the state of goods similar to those demonstrated, the trend of decisions indicates that qualification has not been required under such circumstances. (*Larkin Co. v. Commonwealth*, 172 Ky. 106, 189 S. W. 3,—traveling show rooms; *Eastman v. Tiger Vehicle Co.*, (Texas) 195 S. W. 336,—display space at state fair.)



domestic corporations

DELAWARE

Stockholder, seeking appraisal of his stock, whose written objections to merger fell short of statutory requirements, ruled not entitled to appraisal.

The Court of Chancery, New Castle County, ruled that a stockholder had not filed a legally sufficient objection in writing under the appraisal statute, under circumstances where a letter of objection to a merger was written within the proper statutory period but was not signed by the stockholder, being signed by a person representing himself to be the stockholder's attorney, the court observing that he was not the "present attorney" of the stockholder. Admittedly, no evidence of the authority of the attorney to file the written objection for the stockholder was received by the corporation prior to the vote, and, under the decided cases, the court felt it followed "that the attorney's letter was not a sufficient objection in writing under the statute."

An earlier letter, written by the stockholder himself, which was not attached to the claim and which was relied upon for the first time at the hearing as an objection under the appraisal statute, which expressed tentative dissatisfaction concerned the proposed merger and sought information regarding it, was regarded by the court as an insufficient objection under the statute. "The written objection," remarked the court, "need not be artfully worded but it must be reasonably absolute." The stockholder was, therefore, ruled not entitled to an appraisal.

Application of Atlas Powder Company, 78 A. 2d 1. H. James Conaway, Jr., of Hering, Morris, James & Hitchens of Wilmington, for claimant Zeeb. Clarence A. Southerland and Richard F. Corroon of Southerland, Berl & Potter, of Wilmington, for Atlas Powder Company. Commerce Clearing House Court Decisions Requisition No. 446665.

Validity of declaration of dividends, in lieu of which notes sued upon were issued, ruled a question of fact.

This suit was for the collection of two notes which defendant corporation had given to certain of its stockholders in lieu of dividends. After three trials, involving issues concerning the authorization for the execution of the notes, allegations of fraud voiding them because the board of directors of defendant was composed of a majority of members of a syndicate who caused the notes to be issued without consideration, and whether unauthorized execution of the notes had been ratified either expressly or by implication, the cause came before the Delaware Supreme Court for a third time.

The court, which reversed a judgment of the lower court for the defendant, remanded the cause for a new trial upon the sole ground of the validity of the declaration of the dividends which formed the basis for the notes sued upon, indicating that if the dividends were validly declared, judgment was to be for the plaintiff; if not, then judgment was to be for the defendant company, observing that whether or not the dividends were validly declared was a question of fact which had not yet been passed upon in the proceeding. "It is important to observe," remarked the court, "that the declaration of the three dividends under consideration in our judgment is not subject to suspicion merely because, when declared, a majority of Italo's Board was composed of Syndicate members who were substantial stockholders of Italo. In the absence of fraud or other unfair dealings a Director should not be disqualified from voting upon the question of a dividend declaration merely because he is also a stockholder. If the dividends were declared in compliance with the provisions of Sec. 34 of the General Corporation Law Rev. Code, 1935, Sec. 2066, then, in our view, the notes were issued upon a valid consideration and Italo, by retaining the monies represented by the notes, impliedly ratified their issuance. If not, then there was a failure of consideration and this action must fail. An appellate court cannot try facts. The case must be reversed and remanded for new trial."

Hannigan v. Italo Petroleum Corporation of America, 77 A. 2d 209. Stewart Lynch of Lynch & Herrmann and Aaron Finger of Richards, Layton & Finger of Wilmington, for plaintiff in error. James R. Morford of Marvel & Morford of Wilmington, for defendant.

NEW JERSEY

State courts ruled to have jurisdiction where receiver was appointed more than four months prior to date of bankruptcy.

"The question presented in this review," said the United States District Court, District of New Jersey, "is whether the Bankruptcy Court has the power to require a receiver appointed by a state court more than four months prior to the institution of a Chapter XI proceeding, to turn over to the receiver in the Chapter XI proceeding books and records of the debtor. The receiver held that section 2, subd. a(21) of the Bankruptcy Act, 11 U. S. C. A. sec. 11, subd. a(21), limited the power of the court to enter such an order."

The suggestion was made that the provisions of the New Jersey Corporation Act, under which the state court proceedings were held, are tantamount to bankruptcy legislation and are suspended by the Bankruptcy Act, thus rendering the proceedings in the state court void and the receiver amenable to a turnover order." The court, after an examination of the pertinent statutes, felt that it must be inferred that after the lapse of the four-month period designated by Federal legislation, "Congress left this field of operation to the state courts," and ruled that the proceedings, in this instance, under the New Jersey Corporation Act, were not superseded by the proceedings under Chapter XI of the Bankruptcy Act, affirming the determination of the referee. The court remarked: "It follows from the court's holding that the books, records and property of the debtor corporation are properly in the control of the receiver appointed by the state court. Retention of jurisdiction under these circumstances would be confusing and detrimental to the best interest of creditors and others involved in the proceedings. Accordingly, the petition will be dismissed."

In re Distillers Factors Corporation, 91 F. Supp. 796. Max L. Rosenstein of Newark, for debtor. Kasen, Schmitzer & Kasen of Newark, for receiver.

NEW YORK

Corporation ruled to have no power to enter into partnership agreement.

Plaintiff, a New York corporation, contended it had entered into a moral agreement with the defendants whereby they became co-partners and joint venturers in the purchase of certain premises in New York City. Approximately three years later, the defendants purchased the property and took title in the name of a corporation, the stock of which was owned by them alone. Thereafter, the plaintiff instituted suit to impress a trust upon the property on the ground that the defendants had violated the alleged partnership and joint venture agreement.

The New York Supreme Court, Special Term, Part X, through its Official Referee, while finding nothing in the record to establish that a joint venture or partnership was formed between the parties and that the oral agreement remained executory, remarked: "In any event, it is to be noted that although there is no specific statute in reference thereto, the general consensus of legal authority and opinion in this state prohibits a corporation from entering into a partnership agreement. If a corporation were permitted to become a party to a partnership the possibility exists that it might be bound by the acts of any other member of the partnership. In such event no other member of the partnership would be acting as an officer or agent of the corporation, but as a principal in an association or partnership in which all are equal, and in which each is capable of legally binding other members of such association or partnership by his individual acts. It is a fundamental principle of the laws of this state governing corporations that the management and affairs of each corporation are to be guided by the officers provided for or authorized in its charter. This management must be separate and exclusive, and any arrangement by which control of the affairs of a corporation may be taken from its stockholders and authorized officers and agents would be hostile and in

opposition to the established policy of our general corporation statutes (1935, Opinion Attorney General, 230)." Judgment was rendered for the defendants, the complaint being dismissed upon the merits.

Frieda Popkov Corporation v. Stack, New York Supreme Court, Special Term, Part X, November 6, 1950, 124 N. Y. L. J. 1100. Commerce Clearing House Court Decisions Requisition No. 441913.

Sec. 61-b, G. C. L., requiring plaintiff in stockholder's derivative suit to give security for defendant's reasonable expenses under certain circumstances, ruled applicable in Federal court suit.

One of defendant corporations moved for security pursuant to Section 61-b General Corporation Law, in several stockholder's derivative actions. The United States District Court, Southern District of New York regarded the decision of the Supreme Court of the United States in *Cohen v. Beneficial Industrial Loan Corporation*, 69 S. Ct. 1221, 337 U. S. 541, (The Corporation Journal, October, 1949, page 9), upholding the validity of a comparable New Jersey statute, as making the application of Section 61-b mandatory and granted the motions that security be given.

Levenson (Spielberger et al., Intervenors) v. Little et al., 90 F. Supp. 1022. Bijur & Herts of New York City, for plaintiffs. Spence, Hotchkiss, Parker & Duryea of New York City, James H. Halpin and John E. Massengale of New York City, of counsel, for defendant Textron, Incorporated. Otterbourg, Steindler, Houston & Rosen, of New York City, for defendant American Associates, Inc.

foreign corporations

ALABAMA

Unlicensed foreign corporation, engaged in interstate commerce, held doing business for purpose of service of process upon it.

The defendant in the court below, an unqualified foreign corporation, was successful there in having suit dismissed against it upon the plea that it was not amenable to process because it was not doing business in Alabama. Upon appeal, this judgment was reversed by the Supreme Court of Alabama. That court traced recent developments in the decisions of the Supreme Court of the United States and the Federal courts, indicating a trend away from the refinements evident in leading decisions of twenty-five or more years ago which applied "mere solicitation" or "solicitation plus" criteria and a trend toward a test according to a practical, everyday business or commercial concept of doing or carrying on business of any substantial character," based upon "traditional notions of fair play and substantial justice."

The defendant below was found to be brought within the jurisdiction so as to be subject to service under the newer test, under circumstances where it had a resident agent and employee in Alabama who regularly and systematically conducted transactions for the defendant for approximately a year prior to service of process, involving the solicitation of orders forwarded to Tennessee for execution and shipment, the sales being completed by the agent in Alabama. While shipments were usually made by common carrier, some deliveries were made by defendant's trucks, thus delivering its own products in Alabama. The agent was also intermittently given authority to investigate complaints from Alabama customers and to communicate to the customers the decision of the defendant regarding the adjustment of the complaints. The court concluded: "These regular and systematic solicitations of orders resulting in the flow of appellant's product into the state, we think, under the federal decisions, constitute doing business within the state and bring it within the reach of judicial process, permissible under the Fourteenth Amendment."

*Boyd v. Warren Paint & Color Co.,** 49 So. 2d 559. Lange, Simpson, Robinson & Somerville of Birmingham, for appellant. Caesar B. Powell of Birmingham and John M. Barksdale of Nashville, Tenn., for appellee.

---

*The full text of this opinion is printed in the **State Tax Reporter,** Alabama, page 306.

BRITISH COLUMBIA

Service upon agent, not acting as such at time of service, set aside.

Appellant Dominion of Canada corporation, not licensed or registered in British Columbia, made application to the lower court to set aside service of process made upon it by serving a local steamship company at Vancouver as its agent, which, three years prior to service, had acted in performing services for a vessel of appellant stopping at a British Columbia port, no business whatever having been done by the appellant subsequently.

The British Columbia Court of Appeal reversed a judgment which refused the application to set aside the service, indicating the test was to be whether the agent was carrying on the business of the company served at the time of service and ruling that, in this case, there was not a good service as the agent was not carrying on the principal's business at the time of service.

Central Trust Co. of China et al. v. Dolphin Steamship Co., Ltd., (1951) 1 D.L.R. 19. V. R. Hill, for appellant. C. Locke, for respondent.

CALIFORNIA

Purchases for subsidiary within state, invoiced to and paid for by parent outside state, ruled not doing business by parent so as to uphold service of process upon it.

Defendant corporation at no time maintained a stock of goods or an office within the Federal district in California in which suit was brought and in which the cause of action arose. The defendant, which sought to have the return of service of summons upon it quashed, had made substantial and continuous purchases of plywood, produced by a plywood company in California, shipped at defendant's direction to its wholly owned subsidiaries in California over a period of approximately two years. These purchases were invoiced outside California directly to defendant's office in the state of Washington and payments made by defendant to the seller at a point in New York.

The United States District Court, N. D. California, S. D., concluded that defendant was not "doing business" in the district and granted the motion to quash the return of service and to dismiss the action.

Favell-Utley Realty Co. et al. v. Harbor Plywood Corporation, 94 F. Supp. 96. Joseph L. Alioto of San Francisco, for plaintiff. George Herrington and Orrick, Dahlquist, Neff, Brown & Herrington of San Francisco, for defendant.

NEW YORK

Service on dissolved Delaware company in New York suit, effected after its dissolution, set aside where no business was being done in New York.

Defendant dissolved Delaware company had been served with process, after dissolution and transfer of its assets to another corporation which had assumed its liabilities, in an action in a New York court to recover damages for negligence, alleged to have resulted in the death of plaintiff's intestate. The New York Supreme Court, Appellate Division, Second Department, affirmed an order granting a motion by the defendant, appearing specially to vacate and set aside the service of the summons and complaint on the ground that the corporate defendant was not, at the time of the service of process, doing business within the state of New York. At that time, defendant had no employees in New York, nor was it engaged in winding up or completing any business previously entered into in that state.

The Appellate Division remarked: "Under a statute of the State of Delaware, it was still in existence for the purpose of winding up its affairs and prosecuting and defending suits by and against it." The court approved the conclusion of the official referee, to whom the motion had been referred for determination "that the continuance of the life of the corporation, under the Delaware law, for the purpose of liquidation, did not justify or permit a determination that the presence of the corporation was continued within this state, in view of the uncontradicted

HOW TO CHO

CHECK FOR	BECAUSE
1 · RESPONSIBILITY	A CORPORATION'S STOCK RECORDS are the evidence of the ownership of its to vote them, to receive dividends on them, and share in the assets upon keeps them, then, and how well they are kept, should be a matter of the the company's officers and directors. The company is liable for any loss in them may cause the rightful owner.
2 · KNOW-HOW	THE REGULAR ROUTINE TRANSFERS of a company's stock involve no great ex it is the record-keeping of them that requires the greater care. But any or small, its stock closely held or widely distributed, comes inevitably some of the shares of a deceased stockholder. Then an important decision must supporting documents (administrator's or executor's appointment, court cient and proper? *Should the transfer be made or refused?* A wrong deci loss to the stockholder may mean a suit for damages and consequent reputation of its officers and directors.
3 · SAFETY	A TRANSFER AGENT *makes sure* of the genuineness of the transferor's equipment and facilities for doing so which a corporation's officers or department could not well maintain. He knows from experience, and to make, such forms of inscriptions on new certificates as are often desi but that will almost surely come back to plague the *corporation* and the re-transfer is to be made. He does not permit a new certificate to be issue of a new issue, the number of shares has been checked with the amount of and in the case of a transfer, until the authority of the transferor has been not let a single new certificate pass out of his hands until he has seen the the records completed and the new certificate registered.
4 · EQUIPMENT	MODERN LABOR-SAVING DEVICES and office systems *cut half*, and often cut *time and cost* of preparing and addressing stockholders' lists, calculating, w dividend checks, keeping stock ledgers posted to the instant, preparing, v ing proxies, issuing new stock certificates, and so on. If the transfer agent not equipped with all such machinery and must handle the details by fashioned methods, the cost to the corporation is much more than it shou importance, the chances for error are infinitely greater.
5 · CONVENIENCE	CONVENIENCE FOR STOCKHOLDERS as well as officers is an essential quali sidered in thinking of how, where and by whom the transfers of a corpor be made and its stock records to be kept. To have its transfers made at a p the *minimum of expense*, *minimum of delay*, and *minimum of bother* is n for the company but is important in holding the good will of stockhold the desirability of a company's stock as an investment.

RANSFER AGENT

CT's SCORE

THE CORPORATION TRUST COMPANY, founded 1892, has had the *longest experience* in the transfer of corporate securities of any transfer agency in the country outside the private transfer departments of some of the very old corporations. Its *financial strength* is a matter of public record.

IN THIS RESPECT, The Corporation Trust Company occupies a strong position. Its organization has been *intimately associated with the evolution and development of the present practices and precedents* in the business of making transfers. In fact, the Stock Transfer Guide Service which it created (now maintained by its affiliate, Commerce Clearing House) is the authority almost all transfer agents depend on. So this organization is well equipped, in fact extraordinarily well equipped, to protect the corporation's officers and directors from the unauthorized transfers of stock.

FOR MORE THAN HALF A CENTURY The Corporation Trust Company has been handling the original issues of stock for newly organized companies and the current transfer of those shares in subsequent years. The corporations so served are among the best managed organizations in the country. Some are large with shares widely distributed, others are small and closely held; some are companies with securities listed on one of the Exchanges and actively traded in, others unlisted and inactive. Out of that long and extensive experience has developed an organization to which almost any transfer contingency is familiar, with *tried and proved systems and equipment for every angle of the job* to be done. A safer institution than The Corporation Trust Company for the issue and transfer of corporation securities can hardly be conceived.

THE CORPORATION TRUST COMPANY, serving scores of corporations as transfer agent or registrar, carries on a daily volume of work of this kind that makes practicable an investment in all the latest office machines and devices. Combination check-writing and calculating machines, stenciling and addressing machinery, machines which enclose, seal and stamp in one operation, finger-tip filing systems – all these aids to efficiency The Corporation Trust Company uses to the *advantage and profit of each corporation* it serves as transfer agent or registrar, no matter how active or inactive the individual corporation's stock may be.

THE CORPORATION TRUST COMPANY and its associated companies are able to offer an *exclusive and important advantage* in that respect. Having three separate, fully equipped transfer organizations – one in the financial district of New York, one at Jersey City and one at Wilmington, Delaware – permits a corporation to choose the location of its transfer agent to provide the *greatest degree of convenience and economy* for its stockholders. Where advisable, the corporation may elect to designate one CT organization as Transfer Agent, and either or both of the others to act as co-Transfer Agent.

proof that it was not, during the period of such liquidation, actually doing business here."

De Clara v. Barber Lines, Inc.,* 101 N. Y. S. 2d 62. Commerce Clearing House Court Decisions Requisition No. 443627.

* The full text of this opinion is printed in the CCH **New York Corporation Law Reporter**, page 9532.

OHIO

Philippine mining corporation ruled not subject to service of process, where it had no office and carried on none of its ordinary business in Ohio, and where service was made upon its president in state who was awaiting his return to the Philippines.

Defendant corporation, organized under the law of the Philippines, moved to quash summons which had been delivered to its president in an action in a county court. The Court of Appeals of Ohio, Clermont County, affirmed a judgment granting the motion, upon facts showing that the company, which had been formed to engage in the mining business in the Philippine Islands, was inactive there due to war conditions at the time of the service; that it carried on no such mining business in Ohio, had no office in Ohio, had never sold any gold or silver there; that its president was in Ohio at the time because he was unable, due to war restrictions, to return to the Philippines; that the company's funds which had been in California had been transferred to Ohio banks to accounts in the president's name; that the president made no purchases of machinery; that a directors' meeting of the defendant was held at the president's Ohio home at which authority was given an Ohio bank to act as transfer agent for the company's stock and the bank had so acted.

Perkins v. Benguet Consolidated Mining Co. et al.,* 95 N. E. 2d 5. Gorman, Silversteen & Davis of Cincinnati, for plaintiff — appellant. Ely, White & Davidson and Nichols, Speidel & Nichols of Batavia and Lucien H. Mercier of Washington, D. C., for defendants-appellees. (*An appeal has been filed in this case in the Ohio Supreme Court.*)

*The full text of this opinion is printed in the **State Tax Reporter**, Ohio, page 321.

PENNSYLVANIA

Unlicensed personal service engineering corporation, performing its principal work in another state, ruled not doing business in Pennsylvania so as to be required to qualify.

The plaintiff, a New York engineering corporation, not licensed to do business in Pennsylvania, sought to establish a mechanic's lien on property of defendant corporation. The intervening defendant trust company, a holder of a judgment against the defendant corporation, contended that plaintiff could

not enforce its claim in a Pennsylvania court, as plaintiff had done business and was barred by statute from use of the state courts.

Plaintiff was a personal service corporation, being a chemical and mechanical engineering company. Its business office was in New York, and it had no office, place of business, assets, property or equipment in Pennsylvania. Its sole stockholder, a consulting and contracting mechanical and chemical engineer, did designing and construction work in the special field in the manufacture of soapy and soapless detergents throughout the United States and abroad. Plaintiff agreed to design for the defendant a plant for making soapless detergents at a place in Pennsylvania including the designing of buildings, specification of all necessary equipment, supervision of construction and of initial operation. Plaintiff's contract was not to build the plant but to engineer it. The plans and specifications were prepared in plaintiff's office in New York.

The Court of Common Pleas of Berks County concluded that plaintiff was not doing business in Pennsylvania so as to be barred from maintaining suit. It regarded supervisory trips of plaintiff's employees to Pennsylvania to inspect the proposed site and to inspect the progress of work according to the plans supplied by plaintiff as not, of themselves, constituting doing business. The court emphasized the fact that plaintiff's charges showed over two thousand hours of draftsman's and engineer's work in New York City on design, against the few hours spent in Pennsylvania.

Alan Porter Lee, Inc. v. Du-Rite Products Company, Inc.,* Court of Common Pleas, Berks County, August 25, 1950; 43 Berks County Law Journal 49. Dawson H. Muth, for plaintiff. John A. Moss, John A. Clark, for Berks County Trust Company, intervening defendant, and rules. Commerce Clearing House Court Decisions Requisition No. 445917.

*The full text of this opinion is printed in the **State Tax Reporter**, Pennsylvania, page 10,725.

taxation

DISTRICT OF COLUMBIA

Boats owned by foreign company active in District held subject to property taxes on an apportionment basis where used in interstate commerce.

"The principal question presented," observed the United States Court of Appeals for the District of Columbia Circuit, "is whether under statutes applicable in the District of Columbia tugs, scows and launches owned by the respondent Delaware corporation and employed to a substantial degree in its business in the District may be subjected to the personal property tax of the District on an apportionment basis." The Board of Tax Appeals had held in

substance that the vessels may not be taxed on an apportionment basis because of the absence of statutory authority so to do.

The court reviewed a number of decisions in several states upholding taxation of similar means of transportation, likewise used within and without the taxing state on an apportionment basis, even though the statutes imposed an ad valorem tax in general terms without provision for apportionment. "A tax at full value," remarked the court, "would not have been fair or permissible, but it did not follow that none at all could be obtained. We find no sufficient reason to depart from such decisions." Regarding the apportionment itself, the court said: "As to the method of apportionment we think the company, in the light of this decision, should be afforded another opportunity to submit a plan for consideration; and that the District of Columbia authorities should not formulate its plan until such opportunity is given and, if availed of, the Company's plan is considered along with other relevant plans and evidence."

*District of Columbia v. The Smoot Sand & Gravel Corporation,** United States Court of Appeals for the District of Columbia Circuit, July 24, 1950. George C. Updegraff, Assistant Corporation Counsel, with whom Vernon E. West, Corporation Counsel, and Chester H. Gray, Principal Assistant Corporation Counsel, were on the brief, for petitioner. David R. Shelton of Washington, for respondent. Commerce Clearing House Court Decisions Requisition No. 437964. (*Petition for a writ of certiorari filed in the Supreme Court of the Unitd States, January* 11, 1951; *Docket No.* 491. *Certiorari denied, February* 26, 1951.)

*The full text of this opinion is printed in the **District of Columbia Tax Reporter**, page 2516.

ILLINOIS

Massachusetts corporation, with office and warehouse in Illinois, held taxable by the Federal Supreme Court for retailers' occupation tax purposes on all Illinois orders except those sent by Illinois customers direct to Massachusetts office and filled from there by shipment directly to Illinois customers.

In *Norton Co. v. Department of Revenue*, 405 Ill. 314, 90 N. E. 2d 737, (The Corporation Journal, April, 1951, page 128), the Illinois Supreme Court ruled that a Massachusetts corporation, with its manufacturing plant in that state and with an office and warehouse in Chicago, Illinois, where it kept an inventory of about 3,000 items, was subject to taxation under the Illinois retailers' sales tax law, not only on sales of items stocked in Illinois, but also upon all orders filled from the plant in Massachusetts, either on orders sent by customers to the Chicago office or to the Massachusetts office. The court held that the presence of the local retail outlet was sufficient to attribute all income derived from Illinois sales to that outlet and render it all taxable.

Upon appeal, the Supreme Court of the United States, while vacating the judgment of the state court and remanding the cause for further proceedings not inconsistent with its opinion,

has, in effect, upheld the taxation of the Massachusetts company on all income derived from Illinois sales, with the exception of one classification which it outlined as follows: "The only items that are so clearly interstate in character that the State could not reasonably attribute its proceeds to the local business are orders sent directly to Worcester (Massachusetts) by the customer and shipped directly to the customer from Worcester. Income from those we think was not subject to the tax."

The court emphasized the fact that the Illinois tax falls on the vendor, and distinguished its decisions involving sales and use taxes where the impact of the tax is on the local buyer or user.

*Norton Company v. Department of Revenue,** Supreme Court of the United States, February 26, 1951; Docket No. 133, Commerce Clearing House Court Decisions Requisition No. 448360.

*The full text of this opinion is printed in the **State Tax Reporter,** Illinois, page 6433.

state legislation

Georgia—Act No. 26, Acts of 1950, repeals Section 22-1104, Code of 1933, which provided for service by publication upon a corporation having no public place of business and no office or agent in Georgia.

A sales and use tax, effective April 1, 1951, is imposed by Act No. 240.

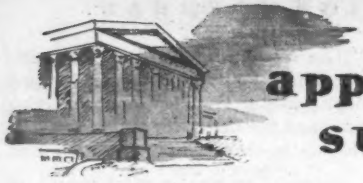
Maine—The powers of a Maine corporation have been enlarged by Chapter 4 to permit it to "make donations for the public welfare or for charitable, scientific or educational purposes."

New York—Chapter 7, Laws of 1951, amends Section 34 of the General Corporation Law so as to permit every corporation organized under the laws of New York and doing business and operating in New York to expend funds for the betterment of the community in which it operates without including the expenditure in its annual report to its stockholders. Section 34 is reenacted as it stood prior to its amendment by Laws of 1950, Chapter 297.

North Carolina—Senate Bill 25 adds new provisions governing the winding up of the affairs of corporations whose articles have been suspended for failure to file reports or pay taxes.

Oregon—Senate Bill 20 changes the required vote of stockholders of an Oregon corporation upon and increase or decrease of capital stock from a majority vote to a vote of three-fourths of all the subscribed capital stock.

South Dakota—Senate Bill 10 exempts directors of domestic companies from liability for debts created beyond the subscribed capital stock to the extent that such debts are secured by mortgages on real estate within South Dakota which are given to or insured by the United States or any agency or instrumentality thereof.



appealed to the supreme court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

CONNECTICUT. Docket No. 132. *Spector Motor Service, Inc. v. O'Connor,* 181 F. 2d 150. (The Corporation Journal, May, 1950, page 153.) State franchise tax liability—qualified interstate trucking corporation—interstate commerce. **Petition for writ of certiorari filed, June 15, 1950. Certiorari granted, October 9, 1950. (71 S. Ct. 49.) Argued, November 29 and 30, 1950. Dennis P. O'Connor substituted as defendant, November 30, 1950. January 2, 1951:** "This case is ordered restored to the docket for reargument." **Reargued, January 10, 1951.**

DISTRICT OF COLUMBIA. Docket No. 491. *District of Columbia v. The Smoot Sand & Gravel Corporation,* United States Court of Appeals for the District of Columbia, July 24, 1950. (The Corporation Journal, April, 1951, page 313.) Personal property taxes—boats—apportionment basis. **Petition for certiorari filed, January 11, 1951. Certiorari denied, February 26, 1951.**

GEORGIA. Docket No. 4. *Georgia Railroad & Banking Company v. Redwine,* United States District Court, Northern District of Georgia, July 29, 1949. (The Corporation Journal, February, 1950, page 92.) Property tax exemption—suit against state in Federal Court. **Appeal filed, November 12, 1949, Jurisdiction noted, December 5, 1949. February 20, 1950:** *"Per curiam*: Inasmuch as the Attorney General of Georgia stated at the bar of this Court that plain, speedy and efficient State remedies were available to appellant, the cause is ordered continued for such period as will enable appellant with all convenient speed to assert such remedies." (70 S. Ct. 472.)

Docket No. 582. *Redwine v. Dan River Mills, Inc.,* Georgia Supreme Court, October 9, 1950, rehearing denied, November 14, 1950. (The Corporation Journal, December, 1950, page 233.) State income taxation—receipts from interstate commerce. **Petition for writ of certiorari filed, February 27, 1951.**

ILLINOIS. Docket No. 133. *Norton Co. v. Department of Revenue,* 405 Ill. 314, 90 N. E. 2d 737. (The Corporation Journal, April, 1950, page 128.) State Retailer's Occupation (Sales) Tax—interstate shipments into Illinois. **Petition for writ of certiorari filed, June 15, 1950.. Certiorari granted, October 9, 1950. (71 S. Ct. 49.) Argued, December 6, 1950. Judgment vacated and cause remanded, February 26, 1951.** (See page 314.)

NEW JERSEY. Docket No. 384. *State of New Jersey v. Standard Oil Co.,* 74 A. 2d 565. (The Corporation Journal, October, 1950, page 186.) Personal property—corporations—escheat. **Appeal filed, October 25, 1950. Probable jurisdiction noted, December 4, 1950. (71 S. Ct. 239.) Argued, March 5, 1951.**

---

* Data compiled from **CCH U. S. Supreme Court Bulletin,** 1950-1951.

regulations and rulings

District of Columbia—Purchases of material and supplies to be physically incorporated in and to become real property, by a contractor who enters into a construction contract with the United States, are exempt from the sales and use tax. (Letter of the Assessor, District of Columbia Tax Reporter, ¶ 65-003.)

Indiana—Receipts from all sales of property of any kind to the Federal Government or any of its agencies are subject to the Indiana Gross income and bonus tax on the same basis as receipts from sales to other purchasers who are final users. No prime contractor or subcontractor may avoid tax payments on "constructive receipts" because payments are made by the Federal Government. Any tax liability is solely the responsibility of the contractor, and the Department will not honor "tax exemption certificates" or tax exemption clauses in contracts, nor will it recognize any contract clause or separate agreement whereby the Federal Government assumes liability for Indiana taxes or agrees to reimbuse the contractor for the same. (Office Memorandum of Indiana Department of State Revenue, State Tax Reporter, Indiana, ¶ 10-873.01.)

Kentucky—A company incorporated under Federal law, engaged as a Federal instrumentality in Federal activities, was required to comply with the laws of a state in which it has an office in regard to filing the name and post office address of an authorized agent in such state upon whom legal process or demand against the corporation may be served. However, there is no Congressional reguirement that the corporation file its charter and amendments in the state and, without the consent of Congress, a state has no power to impose such a condition on a Federal instrumentality. (Opinion of the Attorney General, State Tax Reporter, Kentucky, .010.)

Massachusetts—A foreign corporation is not "doing business" so as to be required to be qualified, where it merely holds title to real estate or stores a product in the state which never enters the stream of intrastate commerce. (Letter of Commissioner of Corporations and Taxation, State Tax Reporter, Massachusetts, ¶ .01445.)

Mississippi—Sales Tax Rule No. 38, relating to interstate commerce, classes as not taxable sales in which the buyer and seller are in different states and property is delivered at a point outside Mississippi and sales in which the buyer and seller are both in Mississippi and property is shipped from without the state to another point outside the state. (State Tax Reporter, Mississippi, 764-038.)

Nebraska—Small loan companies, incorporated securities, brokers and other corporations which market securities as issuers are not exempt from the corporation franchise (occupation) tax under the statute providing for the

exemption of all banking, insurance and building and loan association corporations and all other corporations paying an occupation tax under any other statute. (Opinion of the Attorney General, State Tax Reporter, Nebraska, ¶ 9-003.)

New Hampshire—A single instance of the leasing of real property in New Hampshire by a foreign corporation would not constitute "doing business" so as to require qualification, but engaging in leasing activities in several instances, requiring the collection of rents, maintenance and other related business activities, would constitute "doing business." (Opinion of the Attorney General, State Tax Reporter, New Hampshire, 3-001.)

New Mexico—Purchases of obligations insured under the National Housing Act, the appointment of a local agent to service the mortgages and the foreclosure of the mortgages upon default, do not constitute doing business within the state by a foreign corporation. (Opinion of the Attorney General to State Corporation Commission, State Tax Reporter, New Mexico, ¶ .012.)

New York City—A subcontractor who merely furnishes material to a contractor is required to charge and collect the sales tax, since the contractor is the ultimate consumer. The result is different if the sub-contractor furnishes and installs the materials. In the latter case, the sub-contractor is liable for the sales or use tax. (Ruling of Special Deputy Comptroller, State Tax Reporter, New York, ¶ 195-052.)

North Carolina—A subsidiary of a foreign corporation which will lease a building in North Carolina for the purpose of processing material, and then shipping the finished product as directed by the parent corporation, will be required to domesticate in the state. (Opinion of the Attorney General, State Tax Reporter, North Carolina, ¶ 2-012.932.)

The state is not prohibited from including Federal securities in the capital, surplus and undivided profits of a corporation in determining the base for franchise tax purposes. (Opinion of the Attorney General, State Tax Reporter, North Carolina, ¶ 5-301.42.)

North Dakota—Materials and supplies used in the construction of a pipe line across the state to carry crude petroleum, with no receiving and delivering facilities within the state, are not subject to the use tax, the property being used in interstate commerce and falling within the statutory exemption. (Opinion of the Attorney General, State Tax Reporter, North Dakota, ¶ 64-013.)

Rhode Island—If a Rhode Island corporation has motor vehicles registered in other states, these vehicles cannot be operated over Rhode Island highways until they are registered in that state, as a Rhode Island resident cannot be granted non-resident privileges. (Letter of Registrar of Motor Vehicles, State Tax Reporter, Rhode Island, ¶ 50-101.10.)

The sales tax does not apply to meals served to employees where the compensation of such employees includes the providing of such meals without charge. The sales tax does apply to meals served to employees where a separate charge or deduction is made therefor by the employer. (Ruling of State Tax Administrator, State Tax Reporter, Rhode Island, ¶ 64-048a.)

some important matters

for April and May

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements coverd by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

Alabama—Annual Franchise Tax due April 1, but may be paid without penalty until April 30.—Domestic and Foreign Corporations.

Alaska—Returns of Tax withheld at the source due on or before April 30.—Domestic and Foreign Corporations.

Arkansas—Income Tax Return and Payment due on or before May 15.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before May 15.—Domestic and Foreign Corporations.

California—Quarterly Retail Sales Tax Return and Payment due on or before April 30.—Domestic and Foreign Corporations.

Colorado—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Annual License Tax due on or before May 1.—Domestic and Foreign Corporations.

Connecticut—Quarterly Retail Sales Tax Return and Payment due on or before April 30.—Domestic and Foreign Corporations.

Delaware—Annual Franchise Tax due after April 1 and before July 1.—Domestic Corporations.

Returns of Information at the source due on or before April 30.—Domestic and Foreign Corporations making certain payments of salaries, dividends, interest or other income to citizens or residents of Delaware during 1950.

District of Columbia—Franchise (Income) Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Indiana—Quarterly Gross Income Tax Return and Payment due on or before April 30.—Domestic and Foreign Corporations.

Iowa—Quarterly Retail Sales Tax Return and Payment due on or before April 20.—Domestic and Foreign Corporations.

Kansas—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Kentucky—Income Tax and Corporation License Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Louisiana—Income Tax Return due on or before May 15.—Domestic and Foreign Corporations.

Maryland—Annual Report (Personal Property Return) due on or before April 15.—Domestic Corporations.

Franchise Tax Report and Tax due April 15.—Domestic Corporations.

Income Tax Return due April 15.—Domestic and Foreign Companies.

Annual Report (Personal Property Return) and Filing Fee due on or before April 15.—Foreign Corporations.

Massachusetts—Excise Tax Return due on or before April 10.—Domestic and Foreign Corporations.

Missouri—Quarterly Retail Sales Tax Return and Payment due on or before April 15.—Domestic and Foreign Corporations.

Montana—Annual Statement due within two months from April 1.—Foreign Corporations.

New Jersey—Franchise Tax Report and Tax due on or before April 15.—Domestic and Foreign Corporations.

New Mexico—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Franchise Tax due May 1.—Domestic and Foreign Corporations.

New York—Annual Franchise (Income) Tax Return (Form 3 CT—Article 9A, Tax Law) and payment of one-half of tax due on or before May 15.—Domestic and Foreign Business Corporations, Holding Companies and Investment Trusts.

North Dakota—Quarterly Retail Sales Tax Return and Payment due on or before April 20.—Domestic and Foreign Corporations.

Oregon—Excise (Income) Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Returns of Withholding at the source due on or before April 30.—Domestic and Foreign Corporations.

Pennsylvania—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Rhode Island—Semi-Annual Report to Department of Industrial Inspection during April and October.—Domestic and Foreign Corporations employing five or more persons in Rhode Island.

Business Corporation Tax Return and Tax due on or before May 1.—Domestic and Foreign Corporations.

South Dakota—Quarterly Retail Sales Tax Return and Payment due on or before April 15.—Domestic and Foreign Corporations.

Texas—Annual Franchise Tax due May 1.—Domestic and Foreign Corporations.

United States—Withholding at source due on or before April 30.—Domestic and Foreign Corporations.

Vermont—Income (Franchise) Tax Return due on or before May 15.—Domestic and Foreign Corporations.

Virginia—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Income Tax due June 1.—Domestic and Foreign Corporations.

West Virginia—License Tax Report due in April.—Foreign Corporations.

Quarterly Business and Occupation (Gross Sales) Tax Return and Payment due on or before April 30.—Domestic and Foreign Corporations.

Supplementary literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York 5, N. Y.

What Constitutes Doing Business. (April 1951 Edition). A 192-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing busness."

Before and After Qualification. A complete list of aids and services—including those supplied without charge—which CT furnishes for lawyers working on foreign corporation matters.

Corporate Tightrope Walking. An informal presentation of recent developments affecting corporations carrying on business in interstate commerce—developments corporation officers and attorneys will want to watch carefully.

Suppose the Corporation's Charter Didn't Fit! Shows how charter provisions which suit well enough at time of organization may be handicaps for the corporation in later life—some measures to avoid them that a lawyer may help his client to take.

Some Contracts Have False Teeth. Interesting case-histories showing advisability of getting lawyer's advice before contracting for work outside home state, even for federal government.

Delaware Corporations (1949 Edition). Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation.

What Does a Transfer Agent Do? This illustrated pamphlet gives the high spots of a transfer agent's services in 3 minutes reading time, with explanatory text if you want to read further. Of value to small as well as large corporations.

More Sales with Spot Stocks. Advantages found by many manufacturers in carrying spot stocks at strategic shipping points—and preliminary statutory measures necessary to protect corporate status.

When a Corporation Is P. W. O. L. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

We've Always Got Along This Way. A 24-page pamphlet of cases in various states in which corporation officials who had thought they were getting along very well with statutory representation by a business employe suddenly found themselves in trouble.

THE CORPORATION TRUST COMPANY
120 Broadway, New York 5, N. Y.

The CORPORATION JOURNAL

The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices.